



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

Agency: Office of Insurance Commissioner

☒ Permanent Rule
☐ Emergency Rule

Effective date of rule:

Permanent Rules

☒ 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

☐ Immediately upon filing.

☐ Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

Purpose: Implement RCW 48.18.547, which was enacted into law when 2SHB2292 was signed by the Governor.
Insurance Commissioner Matter No. R 2006-01

Citation of existing rules affected by this order:

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 48.02.060 and RCW 48.18.547.

Other authority: None.

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 06-12-076 on 6/6/2006 (date).

Describe any changes other than editing from proposed to adopted version:

Where feasible, the definitions were re-organized to appear in the sections of the rule to which they apply to improve readability. Other changes:

1. The rule was revised to identify the codified sections of the law.
2. The definition of "rate" was removed because it was unnecessary.
3. The definition of "classification plan" was clarified to explain how risks are grouped.
4. The definition of "significant risk factor" was clarified to provide that substantive underwriting factors are presumed to be significant risk factors.
5. The definition of "substantive underwriting factor" was clarified by adding additional examples.
6. WAC 284-20A-030 was clarified to:
 - a. Provide that significant risk factors are components of a risk profile;
 - b. Delete the reference to RCW 48.18.480, which was not needed after the definition of classification plan was clarified;
 - c. Provide that the insurer must explain how each significant risk factor adversely affects the insured's eligibility for premium credits or ability to buy insurance without the application of premium debits, surcharges or assessments; and
 - d. Provide that notice is not required in situations where premium increases are automatic, such as step-rating factors.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

phone

Address

fax e-mail

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

August 10, 2006

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE CODE-REVISOR-USE ONLY
STATE OF WASHINGTON
FILED

AUG 10 2006

941

06-16-054

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	<u>5</u>	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>5</u>	Amended	_____	Repealed	_____

Chapter 284-20A WAC

RULES THAT APPLY TO INSURERS THAT UNDERWRITE MEDICAL MALPRACTICE INSURANCE

NEW SECTION

WAC 284-20A-010 Purpose. This chapter describes the underwriting restrictions that apply to medical malpractice insurers under RCW 48.18.290, 48.18.2901 and 48.18.547.

NEW SECTION

WAC 284-20A-020 Definitions that apply to RCW 48.18.290, 48.18.2901, 48.18.547 and this chapter. The definitions in RCW 48.18.547(1) apply to this chapter. In addition, the definitions in this section apply throughout the chapter:

(1) "Medical malpractice" has the same meaning as in RCW 48.140.010(9).

(2) "Provider" includes both a facility and provider as defined in RCW 48.140.010 (6) and (7).

(3) "Risk profile" means characteristics of a provider that increase or decrease the potential for future medical malpractice claims that may fall in the scope of coverage of a medical malpractice insurance policy.

NEW SECTION

WAC 284-20A-030 Information a medical malpractice insurer must provide to the insured if the insurer takes an adverse underwriting action. Significant risk factors are the components of a risk profile that require notice under RCW 48.18.547(3). If a provider has any significant risk factors that affect the provider's risk profile and may increase the potential for future medical malpractice claims, the insurer must explain each

significant risk factor to the insured in clear and simple language.

(1) The insurer must explain to the insured how each significant risk factor adversely affects the insured's:

- (a) Eligibility for insurance;
- (b) Eligibility for premium credits; or
- (c) Ability to buy insurance without the application of rating rules that result in premium debits, surcharges, or assessments.

(2) Insurers do not have to provide notice if:

(a) The provider asks for product options that increase premium or reduce coverage, such as:

- (i) Deductible or retention changes;
- (ii) Increased coverage limits; or
- (iii) Coverage options.

(b) The provider changes their business in a way that increases exposure, such as adding staff or types of services performed; or

(c) The classification plan includes rating rules that result in automatic premium increases, such as a claims-made policy step-rating rule that increases premium based on years of practice.

(3) For the purposes of this section:

(a) "Classification plan" means a plan to formulate different premiums for the same coverage based on group characteristics. Classification plans group, for rating purposes, risks that have similar insuring, risk and exposure factors.

(b) "Premium" has the same meaning as in RCW 48.18.170.

(c) "Rating rule" means a factor, formula, rule or procedure used to calculate premium. Rating rules include, but are not limited to:

- (i) Experience rating plans;
- (ii) Rating factors or tiers;
- (iii) Surcharge or discount rules; and
- (iv) Schedule rating plans.

(d) "Significant risk factor" means a material element of the insured's risk profile that contributes to or results in an adverse underwriting action by a medical malpractice insurer. Substantive underwriting factors, as defined in WAC 284-20A-040 (3)(a) are presumed to be significant risk factors.

NEW SECTION

WAC 284-20A-040 Use of "substantive underwriting factors" when underwriting new or existing medical malpractice insurance policies. (1) The definition of "underwriting" in RCW 48.18.547 (1)(e) is broad, and includes selecting, rejecting and pricing a risk. Underwriting occurs when a provider first applies for insurance and when the insurer evaluates the provider for renewal purposes.

(2) Insurers are prohibited from considering the factors listed in RCW 48.18.547(2) during any underwriting process unless the insurer can demonstrate that other substantive underwriting factors were also considered. Upon request by the commissioner, an insurer must demonstrate that a completed underwriting process complies with RCW 48.18.547(2). Insurers must retain documentation of each underwriting process for three years.

(3) For the purposes of this section:

(a) **"Substantive underwriting factor"** means a factor that is very important to an underwriting decision. An insurer may use other substantive underwriting factors in an underwriting process if they are comparable in importance to the factors listed in this definition. Examples of substantive underwriting factors include, but are not limited to:

- (i) Criminal acts, including sexual misconduct;
- (ii) Changes in financial condition;
- (iii) Changes in operations that have a reasonable relationship to underwriting, such as changes in:
 - (A) Management or professional staff;
 - (B) Location of business;
 - (C) Business relationships;
 - (D) Medical specialty; or
 - (E) Medical procedures performed;
- (iv) Failure to comply with loss control or loss prevention recommendations within a reasonable period;
- (v) Failure to provide information necessary to underwrite the policy;
- (vi) History of claims, if the insurer can demonstrate they adversely affect the insured's risk profile;
- (vii) Investigations, disciplinary action, restrictions or limitations imposed by or related to a state or federal licensing or administrative agency, law enforcement agency, attorney general, or similar agency or official;
- (viii) Performing procedures outside the scope of an individual's license and/or training;
- (ix) Substance abuse;
- (x) Inadequate facilities, equipment, or maintenance of facilities or equipment;
- (xi) Inadequate staff training program;
- (xii) Peer review or credentialing actions, or changes in staff privileges, such as suspension, restriction, revocation, surrendered privileges, or other termination; or
- (xiii) Unprofessional conduct, as defined in RCW 18.130.180.

(b) **"Underwriting process"** means any series of actions that produce an underwriting decision that affects a provider.

NEW SECTION

WAC 284-20A-050 What constitutes a medical malpractice insurance policy for the purposes of RCW 48.18.290 (1)(b) and 48.18.2901 (1)(a)(ii)? A medical malpractice insurance policy means an insurance policy written with the principal intent to provide medical malpractice insurance. For the purposes of this section, a policy does include medical malpractice insurance written as ancillary coverage to a general liability or package policy if the principal exposure insured is not medical malpractice.